

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2019-____-W

IN RE:)
)
Application of Blue Granite Water)
Company for Approval of a Wholesale)
Water Supply Agreement with the City of)
Charlotte for the York County/Riverhills)
Subdivision Portion of its Authorized)
Service Area)
_____)

APPLICATION

Blue Granite Water Company (“Applicant” or “BGWC”), pursuant to S.C. Code Ann. §58-5-210 (2015) and 10 S.C. Code Regs. 103-743 (2012), requests this Commission’s approval of a contract to purchase wholesale water supply from the City of Charlotte (“City”) for the provision of water service to Applicant’s water customers in the York County / Lake Wylie portion of its authorized service area. In support of this Application, Applicant would respectfully show as follows:

1. Applicant is a public utility currently authorized to operate water and wastewater systems under the jurisdiction of the Commission in sixteen (16) counties in South Carolina, including York County. Its corporate charter is presently on file with the Commission and an appropriate bond has been posted with same. A schedule of rates and charges for Applicant’s water service has previously been approved by Commission Order No. 2018-345(A), issued May

30, 2018, in Docket No. 2017-292-WS, the provisions of which are pending modification in Order No. 2018-802 (to be issued as described in the Commission's directive issued December 5, 2018).

2. Applicant currently provides water service to 4,442 customers constituting 5,595 equivalent residential connections in its York County / Lake Wylie service area. The water sold is purchased by Applicant from York County which in turns purchases it from the City of Rock Hill. Applicant provides this service using distribution facilities which it owns and operates pursuant to authorization issued to it by the South Carolina Department of Health and Environmental Control ("DHEC") as part of public water system ("PWS") No. 4650006.

3. Per Section 11 of the Applicant's February 5, 2018, Franchise Agreement with York County, which agreement was approved by the Commission in its Order No. 2018-325, issued May 2, 2018, Docket No. 2018-74-WS, Applicant is required to provide backup connection facilities for water supply from the City. The contract that is subject of the instant Application makes the requisite supplemental source of water supply required by the Franchise Agreement available to Applicant.

4. In order to obtain the desired supplemental water source, Applicant has entered into a wholesale service agreement, which is submitted to the Commission (and the South Carolina Office of Regulatory Staff ("ORS")) and attached hereto and incorporated herein by this reference as Application Exhibit "1" ("Agreement"). The Agreement provides for the City to supply Applicant with up to two million gallons per day of potable water at rates set forth in City's current City Commercial Rates and Fees structure. Presently, these rates include a monthly Water Availability Fee for an 8-inch meter of \$324.43 per billing cycle, a Commercial Water Usage

Charge of \$2.81 per one hundred cubic feet of water (which equals \$3.76 per 1000 gallons) and a monthly Water Fixed Fee of \$4.45 per billing cycle.

5. The Agreement is expressly subject to approval by this Commission. *See* Application Ex. 1, Section X.

6. Applicant submits that the purchase of service from the City under the Agreement is the most appropriate means by which to address concerns regarding interruptions or reductions in the wholesale water supply from York County. The alternative would be to seek approval from DHEC for installation of wells and/or reactivation of abandoned wells in order to supplement the current wholesale supply available from York County which will take time and significant expense and unnecessary capital investment. In addition, Applicant believes such an alternative would likely be subject to customer objections with respect to aesthetic quality of well water available in this portion of Applicant's authorized service territory.

7. Applicant further submits that approval of the Agreement will have no effect upon current customer service rates as they will not change as a result of such approval. *Cf.* S.C. Code Ann. § 58-5-240(G)(2015) (allowing changes in rates or tariffs to be put in effect without hearing when they do not result in any rate increase to the public utility).

8. In view of the foregoing, Applicant is informed and believes that the public convenience and necessity will be served by the approval of this Application and that no hearing thereupon is necessary.

WHEREFORE, having fully set forth its Application, BGWC respectfully requests that the Commission (a) approve the Agreement; (b) waive hearing on the within matter or review same

on an expedited basis if no opposition is asserted by ORS or intervention is filed, and (c) grant BGWC such other and further relief as the Commission may deem just and proper.

Respectfully submitted,

/s/ John M. S. Hoefer
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*Attorneys for Applicant Blue Granite Water
Company*

Columbia, South Carolina
This 13th day of June, 2019

WHOLESALE WATER SUPPLY AGREEMENT

THIS WHOLESALE WATER SUPPLY AGREEMENT ("Agreement") is made and entered into the 10th day of May, 2019, by and between Blue Granite Water Company, f/k/a, Carolina Water Service, Inc., a Delaware corporation, authorized to conduct business in the State of South Carolina (hereinafter referred to as "Company") and the City of Charlotte, a municipal corporation existing under the laws of the State of North Carolina acting through Charlotte Water, (hereinafter referred to as "City").

WITNESSETH

WHEREAS, Company is, pursuant to a certificate of public convenience and necessity issued to it by the Public Service Commission of South Carolina ("PSC") under S.C. Code Ann. § 58-5-210(2015) and 10 S.C. Code Regs. 103-704 (2012) and a franchise issued to it by the County of York, South Carolina ("County"), authorized to provide water service to the public for compensation in certain portions of York County and has situated therein an existing water system serving ___ equivalent residential connections in the Riverhills subdivision ("Service Area"); and

WHEREAS, the Company currently receives wholesale water supply service from the County for purposes of serving customers in the Service Area, but has requested an additional water supply; and

WHEREAS, Company desires to supplement its source of water supply provided by the County for the benefit of present and future customers in the Service Area to ensure a safe, reliable and sufficient water supply in circumstances where Company's existing water supply may be inadequate to meet its demand or under other circumstances where the acquisition of additional water supply is desired by Company, including but not limited to emergencies; and

WHEREAS, City is willing to sell and Company desires to purchase from City on a wholesale basis water for distribution through Company's system in the Service Area, as it now exists and as it may hereafter be expanded, extended or improved, in amounts necessary to meet all or part of Company's present and future requirements for the period of time and under the terms and conditions as hereinafter set forth; and

WHEREAS, the City is authorized under North Carolina law to provide the wholesale service contemplated hereby, but Company must obtain the approval of the PSC under 10 S.C. Code Regs. 103-743 (2012) in order to carry out the terms and conditions hereof,

NOW, THEREFORE, in consideration of the foregoing premises and the mutual undertakings as hereinafter set out, it is agreed by City and Company as follows:

I. TERM OF AGREEMENT

The term of this Agreement is for a period of Fourteen (14) years from the date of execution or until this Agreement is dissolved by mutual consent of City and Company. Upon consent of both parties this Agreement is renewable for one, ten (10) year period.

II. SALE OF WATER; VOLUME

(a) During the term of this Agreement, City agrees to sell to Company, and Company agrees to purchase from City, for the price herein specified, up to two million gallons per day of potable water for distribution through Company's existing system in the Service Area, or any additions thereto or any extensions thereof, subject only to the limitations set forth herein.

(b) City agrees to provide Company with potable water under this Agreement at a rate set forth in the current City Commercial Rates and Fees structure which currently includes a monthly Water Availability Fee, a Commercial Water Usage Charge, and a monthly Water Fixed Fee. The current rates and charges are: Water Availability Fee for an 8-inch meter of \$324.43 per billing cycle, a Water Usage Charge of \$2.81 per one hundred cubic feet of water (Ccf) which equals \$3.76 per 1000 gallons, and a Water Fixed Fee of \$4.45 per billing cycle.

(c) In order for the City to ensure proper water quality it requires the Company to purchase a minimum of 60,000 gallons for a maximum two-day period and a minimum total of one million gallons per billing cycle.

III. SYSTEM MAINTENANCE AND COLLECTION OF COMPANY WATER SERVICE CHARGES

City shall have no obligation to operate or maintain any of Company's system facilities or collect water service charges from any of Company's customers. Company agrees to maintain its own distribution and delivery system to service its customers and shall be solely responsible for collecting water service charges from its customers.

IV. WATER LINE AND WATER METERS

(a) Company shall design, permit and construct a 16-inch diameter potable water line and appurtenances per approved construction plans by City, which shall be owned, operated and maintained by City, such line to run from the end of the existing 16-inch water line at the approach to the SC 49 bridge near the edge of the Service Area within the State of South Carolina to a point designated by the City where it may be connected to the City's water meter described in subsection (b) hereinbelow. Such point of connection shall be designated so as to have the closest feasible proximity to the Service Area, taking into account the location of the City's available water supply lines with capacity to serve Company's needs. Company shall have sole responsibility for the design, permitting and construction, of this water line. The City will inspect, witness testing of, and approve the installation of the 16-inch water line and appurtenances. All issues shall be resolved to the satisfaction of the City prior to the activation of this water line. The Company will be responsible for all certifications necessary with regulatory agencies and other entities to place this water line in to service including establishment of proper ground cover and maintenance of proper erosion and sediment control measures.

- i. The Company shall execute a standard City Donated Assets Agreement with the City and pay all applicable system development fees, for the official transfer of this water line, appurtenances, and water meter to the City along with a one-year warranty from the time of activation against defects in materials and installation. The City will perform in conjunction with the Company a one-year warranty inspection of the water line, appurtenances, and water meter.

(b) Company shall furnish and install a water meter assembly specified by the City to measure the water delivered by City to Company, same to be no less than 8-inch in diameter. The 8-inch gate valve just downstream of the pressure sustaining valve vault is the designated point of connection and the end of the City's operation and maintenance responsibility. Company shall have the right to request an inspection of said water meter and to request such tests as may be appropriate so as to assure that such water meter is accurately measuring the water delivered to Company. These tests will be conducted by the City within 30 days of the request. Company will be notified by City prior to testing and Company shall have the right to witness said tests. City shall have the right to have its representatives read the water meter within its appropriate monthly read and billing cycle. In the event it should appear during any period that the water meter has failed to measure accurately the water passing through the same, then the amount of water delivered to Company during such period shall be computed by taking into consideration readings when the water meter was functioning properly and, if it appears that this method will not produce an equitable bill, taking into consideration the water meter readings for the same month(s) of the previous year, or similar month of the same year if not previous year experience exists.

(c) Backflow Prevention – The Company shall have an 8-inch Reduced Pressure Principle Backflow Preventer installed after the City Meter assembly pursuant to the City backflow codes, policies and guidelines. The backflow device shall be tested on a minimum of an annual basis and the results of the tested report to the City promptly. If there are any issues with the backflow device, the device must be repaired promptly.

(d) Pressure Sustaining Valve – The Company shall furnish and install a pressure sustaining control valve approved by the City in a vault directly downstream of the meter. All design, permitting, testing and setup of this control valve along with a one (1) year warranty shall be paid for by the Company.

(e) City Easement – The Company shall obtain an easement in the name of the City of Charlotte for any assets sitting outside the road ROW of SC 49 to include the water meter and pressure sustaining valve and appurtenances. The easement agreement needs to be the standard City easement agreement for such purposes.

V. PAYMENT

Company shall pay to City based upon current City rates, fees and charges pursuant to City Code and policies for water supplied during the preceding calendar month. The rates charged by City to Company shall be those specified in Section 2 above (Sale of Water).

VI. PAYMENT DEFAULT

If Company fails to pay the amount of the charges for water delivered within the period herein provided, then City shall have the right to cease delivery of water at any time pursuant to the City's current delinquent water bill turn off process or similar process for the same primary reason.

VII. FORCE MAJEURE

(a) If either party is rendered unable, wholly or in part, to carry out its obligations under this Agreement by force majeure, and if the affected party gives notice and full particulars of such force majeure in writing by certified mail to the other party within reasonable time after occurrence of the event or cause relied upon, the obligation of the affected party, so far as the obligation is affected by force majeure, shall be suspended only during the period of the inability then claimed. The affected party shall remove or overcome such inability with all reasonable dispatch.

(b) "Force majeure" shall mean acts of God or nature, strikes, lockouts, or other industrial disturbances; acts of a public enemy, orders of any kind of the Government of the United States or the States of North Carolina or South Carolina or any civil or military authority; insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances and explosions; malfunctions of machinery and pipelines; partial or entire failure of water supply, or inability of City to deliver water hereunder, of Company to receive water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability.

(c) If City is unable to produce the volume of water provided for in Section II above due to force majeure, it shall prorate the water available to it between Company and City's other customers based upon relative consumption during the immediately preceding year; City shall not be obligated to deliver to Company any water in excess of its share under such proration.

VIII. DEFAULT/BREACH

In case of default (other than non-payment by Company) by either party, the non-defaulting party must give written notice of the default to the defaulting party. After notice of default has been given, the defaulting party shall have ten (10) days to correct its default before the non-defaulting party may treat the default as a breach of this Agreement. No failure to initiate action as to any breach of this Agreement shall be deemed a waiver of any right of action.

IX. DROUGHT RULES

Company agrees to impose on its water customers the same rules and regulations which City may impose on City's water customers during times of drought as declared by the Catawba-Wateree Drought Management Advisory Group. Such rules may include, but shall not be limited to, such emergency measures as bans on water sprinkling, hydrant flushing, car washing and similar uses. City covenants and agrees to use all resources reasonably available to it to meet its obligations under this Agreement and covenants and agrees to treat all municipal customers on the same basis with respect to such rules, regulations and emergency measures.

X. PSC APPROVAL

City acknowledges that the effectiveness and enforceability of this Agreement is contingent upon Company's receipt of the approval of the PSC. Company shall submit this Agreement to the PSC for such approval within ten (10) days of its execution by City. City agrees to cooperate with Company in its efforts to obtain such approval, including the submission of a written declaration, affidavit, or testimony in support of same by an appropriate City official, officer, representative or employee, but shall not be required to incur any third-party costs in so doing.

XI. NOTICES

All notices or other communications hereunder shall be sufficiently given and shall be deemed given as follows: (i) on the date of delivery when hand-delivered to the parties named below; or (ii) three (3) days following the date when mailed by certified or registered mail, postage prepaid, and addressed as follows:

If to City:

Charlotte Water
Attn: Angela Lee, Director
4222 Westmont Drive
Charlotte, NC 28217

If to Company:

Blue Granite Water Company
Attn: Catherine E. Heigel, President
130 South Main Street, Suite 800
Greenville, SC 29601

Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice was given shall be deemed to be receipt of the notice, request, or other communication. Any party hereto may, by written notice given to the other party to this Agreement, designate any further or different addresses to which subsequent notice, certificates, or other communications shall be sent.

XII. MISCELLANEOUS

(a) This Agreement may be amended only by mutual agreement of the parties in writing. No partial invalidity of this Agreement, except as to the term or renewal term or the water service rates provided herein, shall affect the remainder. The parties agree that this Agreement constitutes the entire expression of their intentions with respect to the subject matter thereof and its independent of any and all other agreements by and between City and Company.

(b) City hereby represents and warrants that all appropriate action has been taken by its governing body to authorize the execution of and the performance of the obligations set forth in this Agreement (including any ordinance, resolution, or other necessary form of municipal governmental action) and that the person executing the Agreement on its behalf has been duly authorized to do so. Company represents and warrants that all appropriate action has been taken by its Board of Directors to authorize the execution of and the performance of the obligations set forth in this Agreement and that the person executing the Agreement on its behalf has been duly authorized to do so.

(c) This Agreement is prepared and entered into with the intention that the law of the State of North Carolina shall govern its construction; provided, however, that the laws of the State of South Carolina shall govern and apply to any issue concerning Company's authority to enter into this Agreement and comply with the terms thereof, and the laws of the State of North Carolina shall govern and apply to any issue concerning City's authority to enter into this Agreement and comply with the terms thereof. The courts of the State of North Carolina shall have exclusive jurisdiction to consider any dispute arising under this Agreement.

(d) This Agreement shall inure to the benefit of, and be binding upon, the successors or assigns of each of the parties hereto, but may be assigned only upon mutual consent of both parties with such consent not to be unreasonably withheld.

(e) City and Company hereby acknowledge that this Agreement arose as the result of arm's length negotiations between them and that this Agreement, although manually prepared by representatives of Company, was prepared with the advice, consent, recommendation and review of City and/or City's counsel, and is the product of input by both parties hereto. As a result, any ambiguity or uncertainty is not to be construed against the party whose counsel prepared this Agreement on the grounds that such party's representatives drafted this Agreement.

(f) The Section headings of this Agreement are inserted for convenience only and shall not constitute a part of this Agreement in construing or interpreting any provisions hereof.

(g) The parties agree to give such further assurances, and to execute, acknowledge and deliver such other instruments as shall be reasonably necessary or appropriate in the judgment of the other parties to carry out the intent of this Agreement.

(h) This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which collectively shall constitute but one and the same agreement.

IN WITNESS WHEREOF, the parties hereto, have caused this Agreement to be executed in their names by their duly authorized officers as of the day and year first above written.

BLUE GRANITE WATER COMPANY

WITNESS/ATTEST:

Michael Curtis

Catherine E. Heigel

By: Catherine E. Heigel

Its: President

Amiga Rapp

CITY OF CHARLOTTE

Emily Allen

Sabrina Joy-Hogg

By: Sabrina Joy-Hogg

Its: Deputy City Manager

Deputy City Clerk